

Office of the Presiding Officer  
Military Commission

September 14, 2005

**SUBJECT: Presiding Officers Memorandum (POM) # 9-1 - Obtaining Protective Orders and Requests for Limited Disclosure**

**This POM supersedes POM 9 dated 4 October 2004**

1. This POM addresses the methods by which counsel may obtain Protective Orders and Limited Disclosure from the Presiding Officer, as authorized by Section 6D(5), Military Commission Order No. 1.

**2. Protective Orders - generally.** As soon as practicable, counsel for either side will notify the Presiding Officer and the Assistant of any intent to offer evidence involving Protected Information. When counsel are aware that a Protective Order is necessary, they are encouraged to work with opposing counsel on the wording and necessity of such an order.

**3. When counsel agree to a Protective Order.** Counsel may agree - in writing - that a Protective Order is necessary. In such instances, it is unnecessary to involve the Presiding Officer or the Assistant while counsel work these issues. When counsel agree that a Protective Order is necessary, the counsel requesting the order shall present the order to the Presiding Officer for approval and signature along with those necessary representations that opposing counsel does not object. This may be done as an attachment to an email, or if during the course of a Commission session, in hard-copy. In preparing the request, counsel shall be attentive to paragraph 6 of this POM.

**4. When counsel do not agree to a Protective Order.** The procedures in POM # 4-2 do not apply, except where noted. If a party requests a Protective Order and the opposing counsel does not agree with the necessity of the Order or its wording, the counsel requesting the Order shall:

a. Present the requested order as an email attachment to the Presiding Officer (with a CC to the Assistant) for signature, along with the below information in the format specified below with each item in a separately numbered paragraph. The order shall be styled the same as a filing as provided in POM 4-2 with the name of the document "Protective Order [Subject matter sought to be protected]." The subject of the order shall not itself be protected as the subject will be placed in the filings inventory which is a public document. If necessary, the subject can be a unique number. In preparing the request, counsel shall be attentive to paragraph 6.

(1). The nature of the information sought to be protected. When such information is in document form, it shall be attached.

(2). Why the order is necessary.

(3). Efforts to obtain the agreement of opposing counsel.

b. The requesting counsel will CC or otherwise provide copies of the attachment to opposing counsel unless Commission law permits the matter to come to the Presiding Officer's attention *ex parte*. In the case of a prosecution requested Protective Order, only the detailed defense counsel must always be served. The Civilian Defense Counsel will be served if they are allowed access to the information sought to be protected. Foreign Attorney Consultants shall not be served unless they are authorized under Commission Law to receive the items.

c. The Presiding Officer will, if time and distance permits, hold a conference with Prosecution counsel and the Detailed Defense Counsel, and if under circumstances that Commission Law permits, the civilian defense counsel, prior to issuing or signing a contested protective order. The objective of such conferences will be to have a contested protective order become an agreed upon protective order, consistent with security and other requirements, if possible and practical. Consequently, both sides will be prepared to explain their position on the proposed order.

**5. Limited disclosure requests.** When the prosecution requests that the Presiding Officer exercise his authority under Section 6D(5)(b), Military Commission Order No. 1, the prosecution shall provide to the Presiding Officer and the Assistant an order for the Presiding Officer's signature directing limited disclosure. In preparing the request, counsel shall be attentive to paragraph 6. This order will contain the following in separately numbered paragraphs:

a. To whom the limitation shall apply (the accused, detailed defense counsel, civilian defense counsel.)

b. The method in which the limitation shall be implemented (which option under section 6D(5)(b)(i)-(iii)).

c. In the case of a limitation under section 6D(5)(b)(i), the information to be deleted.

d. In the case of a limitation under section 6D(5)(b)(ii), the nature of the information to be summarized and the summary to be substituted therefore.

e. In the case of a limitation under section 6D(5)(b)(iii), the nature of the information to be substituted, and the statement of the relevant facts that the limited information would tend to prove.

f. The reasons why it is necessary to limit disclosure of the information, and whether other methods of protecting information could be fashioned to avoid unnecessarily limiting disclosure.

g. Whether the prosecution intends to present the information whose disclosure is sought to be limited to the Commission.

h. If the request to the Presiding Officer was served on, or shared with, the detailed defense counsel, any submission by the detailed defense counsel. If the request was not served on or shared with the detailed defense counsel, the reasons why it was not.

## **6. Security considerations and exceptions.**

a. This POM does not relieve any person from their duty to adhere to Commission Law, Federal and other laws and regulations concerning the handling, marking, dissemination, and storage of classified or protected information.

b. No party may send any classified or other protected material to the Presiding Officer or the Assistant by email. If there is a need to transmit classified or protected material to the Presiding Officer or the Assistant, counsel will so advise the Assistant. The Assistant will provide transmission protocols.

c. In the case of orders under this POM that are to be requested or presented when at Guantanamo, the submission to the Presiding Officer may be done in hard copy. In such cases, the parties will consult the SSO and the Assistant as to the handling of the order, and whether it shall be reduced to electronic form.

Signed by:

Peter E. Brownback III  
COL, JA, USA  
Presiding Officer